



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,342	02/11/2005	Werner Flueckiger	DT-6974	6954

30377 7590 05/14/2007
DAVID TOREN, ESQ.
ABELMAN FRAYNE & SCHWAB
666 THIRD AVENUE
NEW YORK, NY 10017-5621

EXAMINER

PANI, JOHN

ART UNIT	PAPER NUMBER
----------	--------------

3709

MAIL DATE	DELIVERY MODE
-----------	---------------

05/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/524,342

Applicant(s)

FLUECKIGER, WERNER

Examiner

John Pani

Art Unit

3709

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/11/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/11/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 1, 3-8, and 11 are objected to because of the following informalities:

In reference to Claim 1

- a. Line 5 refers to “two wall sections (19)”. Line 11 refers to “two wall sections (11, 12)”. It appears that these “two wall sections” were meant to refer to the same structure. It is suggested to change the reference numbers so that they are consistent.
- b. Line 4 refers to “inlet section (2)”. Line 9 refers to “entry section (2)”. It is suggested to replace “entry” in line 2 with –inlet--.
- c. Line 13 refers to “the wall sections”. It is unclear which of the three sets of wall sections this refers to. In line 13, after “the wall sections”, it is suggested to insert the reference number(s) of the wall sections that surround holding part (5).

In reference to Claim 3

Lines 2 and 3 refer to “holding part (4)”, which lacks antecedent basis. In lines 2 and 3, it is suggested to replace “holding part (4)” with –holding part (5)--.

In reference to Claim 4

- a. Lines 5 and 8 refer to “inlet section (22)”. Line 11 refers to “inlet section (21)”. In line 11, it is suggested to replace “inlet section (21)” with –inlet section (22)--.

Art Unit: 3709

b. Line 12 refers to "the wall sections". It is unclear which of the sets of wall sections this refers to. In line 12, after "the wall sections", it is suggested to insert the reference number(s) of the wall sections that surround holding part (24).

In reference to Claim 5

In lines 2-3, "the edge region" lacks antecedent basis in the claims. In line 2 it is suggested to replace "the" with --an--.

In reference to Claim 6

Line 2 refers to "a third cut blank (30)". The claim does not make any reference to a first or second cut blank, and it appears only one cut blank is involved with the drain member in this case. It is suggested to replace "a third cut blank" with --a first cut blank--.

In reference to Claim 7

Line 2 refers to "a fourth, fifth, and sixth cut blanks (51, 54, and 56)". The claim does not refer to a first, second, or third cut blank, and it appears only three cut blanks are involved with the drain member in this case. It is suggested to replace "a fourth, fifth, and sixth cut blanks" with --a first, second, and third cut blanks--.

In reference to Claim 8

Line 2 refers to "wall section (11, 12, 26, 27)". "Walls section (11, 12)" lacks antecedent basis in the claim. It is suggested to change "(11, 12, 26, 27)" to --(26, 27)--.

Art Unit: 3709

In reference to Claim 11

Line 2 refers to "wall section (11, 12, 26, 27)". "Walls section (26, 27)" lacks antecedent basis in the claim. It is suggested to change "(11, 12, 26, 27)" to ~~-(11, 12)-~~.

Appropriate correction is required.

NOTE: For purposes of analysis of the claims in respect to prior art, the above changes have been assumed.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 4, 5 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No. 6,620,142 to Fluckiger (Fluckiger) in view of US Pat. No. 2,878,486 to Bartlett et al. (Bartlett).

In reference to Claims 1, 4, 5, 8, and 11

Claim 4 of Fluckiger teaches all the limitations of claims 1, 4, 5, 8, and 11 of the application with the exception that it does not teach that the holding part is surrounded by the wall sections.

Bartlett teaches of a sanitary device (10) with a projecting handle portion (18). In a folded position (**See Fig. 4**), the handle portion (18) is surrounded by the wall portions (14). Bartlett notes (**Col. 3 lines 10-30**) that this configuration is beneficial because it occupies a minimum amount of space, because the folded product defines an area equal to the wall portion (14).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the shape and dimensions of the wall sections, and the gripping part of the invention of claim 4 of Fluckiger, such that the gripping part would be surrounded by wall sections as taught by Bartlett, so that the device would occupy a minimum amount of space and could easily be carried, as explicitly taught by Bartlett.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

Art Unit: 3709

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3- 6, and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Application No. 1 078 614 to Fluckiger (Fluckiger) in view of US. Pat. No. 2,878,486 to Bartlett et al. (Bartlett). However, U.S. Patent No. 6,620,142 to Fluckiger is considered an English language equivalent by examiner and will be referred to heretofore. See MPEP s. 901.05(III) and 2131.01.

In reference to Claim 1

Fluckiger teaches: a disposable aid for urinating having a folded drain member (1) (**conduit element 1**) which is formed from walls (19) (**2a and 3a See Fig. 3**) which lie flat against each other, of a material which can soften and/or decompose in water (**See col. 1 lines 55-59**), by folding in the longitudinal direction (10), said drain member (1) (1) including an inlet section (2) (**inlet part 5**) which can be formed into a funnel (**see Fig. 1**) consisting of two wall sections (19)(**2a and 3a**) provided with a wetting inhibiting layer (18) (**coating 18**) for reception of urine, a drain section (3) (**outlet part 6**) for the draining of urine into a toilet or the like and of two wall sections (17) (**2b and 3b**) free of wetting inhibiting medium (**See col. 2 lines 32-66**) and a sideways projecting holding part (5) (**gripping part 7**) formed of two wall sections (13) (12), the holding part being formed in one piece with the entry section (2) (5), characterized in that the walls (19) (**2a and 3a**) forming the inlet section (2) (5) have two wall sections (11, 12) (**2a and 3a**) which are folded along lines (8, 9) (**See Fig. 3**) such that the wall sections (11, 12) (**2a and 3a**) are arranged lying over one another (**See Fig. 1**). However, Fluckiger does

Art Unit: 3709

not mention that the holding part for the opening of the inlet section is surrounded by the wall sections.

Bartlett teaches of a sanitary device (10) with a projecting handle portion (18). In a folded position (**See Fig. 4**), the handle portion (18) is surrounded by the wall portions (14). Bartlett notes (**Col. 3 lines 10-30**) that this configuration is beneficial because it occupies a minimum amount of space, because the folded product defines an area equal to the wall portion (14).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the shape and dimensions of wall sections 2a and 3a, and the gripping part 7 in the device taught by Fluckiger, such that the gripping part 7 would be surrounded by wall sections 2a and 3a as taught by Bartlett, so that the device would occupy a minimum amount of space and could easily be carried, as explicitly taught by Bartlett.

In reference to Claim 3

Fluckiger in view of Bartlett teaches a device of claim 1 (see rejection of claim 1 by Fluckiger in view of Bartlett). Fluckiger further teaches a first cut blank (**See Fig. 3**) that includes the inlet section (5) and the holding part (7), and that the wall sections forming the holding part are connected to one another (**Col. 2 lines 32-36**). However, Fluckiger does not explicitly state that the connection between the sections forming the gripping part occurs over their full area.

It would have been obvious to one having ordinary skill in the art to have made the device described by Fluckiger such that the connection between the wall sections

Art Unit: 3709

forming the gripping part occurred over their full area so that urine would not leak out of the funnel, or wet the space where the connection is made.

In reference to Claim 4

Fluckiger teaches a disposable aid for urination having a folded drain member (21) (**conduit element 1**) which is formed of walls (**2a and 3a See Fig. 3**) which lie flat against each other, of a material which can soften and/or can decompose in water (**See col. 1 lines 55-59**), by folding along the central line (42) (**10**) and which bound a drain channel (**outlet part 6**) provided with a wetting inhibiting layer (18) (**See col. 2 lines 32-66**), said drain member (21) (**1**) including an inlet section (22) (**inlet part 5**) which can be formed into a funnel (**See Fig. 1**) for the reception of urine, a drain section (23) (**outlet part 6**) for the draining of urine into a toilet and a sideways projecting holding part (24) (**gripping part 7**), characterized in that the inlet section (22) (**inlet part 5**) is formed of a first wall (**sections of 2a and 3a between 10 and either 2c or 3c**) with a wall section (26) (**sections of 2a and 3a between 10 and either 2c or 3c**) which is made in one piece with the wall section (23) (**See Fig. 3**) for the formation of the drain section (23) (**6**) and of a second wall (**2c and 3c**) with a wall section (27) (**2c and 3c**) and in that the holding part (24) (**7**) is connected to the wall section (27) (**2c and 3c**, **See Fig. 3**) for the forming of the inlet section (21)(**5**). However, Fluckiger does not mention that the holding part is surrounded by the wall sections.

Bartlett teaches of a sanitary device (**10**) with a projecting handle portion (**18**). In a folded position (**See Fig. 4**), the handle portion (**18**) is surrounded by the wall portions (**14**). Bartlett notes (**Col. 3 lines 10-30**) that this configuration is beneficial because it

Art Unit: 3709

occupies a minimum amount of space, because the folded product defines an area equal to the wall portion **(14)**.

It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the shape and dimensions of wall sections **2a** and **3a**, and the gripping part **7** in the device taught by Fluckiger, such that the gripping part **7** would be surrounded by wall sections **2a** and **3a** as taught by Bartlett, so that the device would occupy a minimum amount of space and could easily be carried, as explicitly taught by Bartlett.

In reference to Claim 5

Fluckiger in view of Bartlett teaches a device of claim 4 (see rejection of claim 4 by Fluckiger in view of Bartlett). Fluckiger further teaches that the wall sections **(2b and 3b)** of the drain section **(6)** are connected to each other in the edge region **(12b and 13b, see col. 2 lines 20-45)**.

In reference to Claim 6

Fluckiger in view of Bartlett teaches a device of claim 4 (see rejection of claim 4 by Fluckiger in view of Bartlett). Fluckiger further teaches that the drain member **(1)** is formed of a third cut blank **(See Fig. 3)**.

In reference to Claims 8 and 11

Fluckiger in view of Bartlett teaches a device of claims 4 and 1 (see rejection of claims 4 and 1, respectively, by Fluckiger in view of Bartlett). Fluckiger further teaches that wall sections are provided with stiffening grooves **(folds 10 and 15 are grooves that would stiffen the device)**.

In reference to Claims 9 and 12

Fluckiger in view of Bartlett teaches a device of claims 4 and 1 (see rejection of claims 4 and 1, respectively, by Fluckiger in view of Bartlett). Fluckiger further teaches that the drain member (6) consists of a hygiene paper ("**toilet paper**" **col. 1 lines 55-60**).

In reference to Claims 10 and 13

Fluckiger in view of Bartlett teaches a device of claims 4 and 1 (see rejection of claims 4 and 1, respectively, by Fluckiger in view of Bartlett). Fluckiger further teaches that the wetting inhibiting layer (18) contains a medical test agent that reacts to a specific characteristic of the urine of the user (**See col. 2 lines 55-60**).

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fluckiger in view of Bartlett as applied to claim 1 above, and further in view of US Pat. No. 6,202,225 to Beck et al. (Beck).

Fluckiger in view of Bartlett teaches a device of claim 1 (see rejection of claim 1 by Fluckiger in view of Bartlett). Fluckiger further teaches that the inlet section (5) is made of a first cut blank (**See Fig. 3**), and that the inlet section (5) and drain section (6) are connected to each other (**See Fig. 3**). Fluckiger, however, does not mention that the drain section is formed of a second cut blank.

Beck teaches of a urinary device including an inlet section (11) and an a drain section (26), in which the inlet section is formed from a first blank (11) and the drainage section is formed from a second blank (26).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device taught by Fluckiger in view of Bartlett so that it was formed from a first blank containing the inlet portion and a second blank containing the drain portion, so that the inlet and drain portions could be made from two different materials.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fluckiger in view of Bartlett as applied to claim 4 above, and further in view of Beck and US Pat. No. 2,775,382 to Kayat (Kayat).

Fluckiger in view of Bartlett teaches a device of claim 4 (see rejection of claim 4 by Fluckiger in view of Bartlett). Fluckiger further teaches that the drain member (1) is made of a single blank (**See Fig. 3**). However, Fluckiger does not mention a second or third cut blank.

Beck teaches of a urinary device including an inlet section (11) and a drain section (26), in which the inlet section is formed from a first blank (11) and the drainage section is formed from a second blank (26).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device taught by Fluckiger in view of Bartlett so that it was formed from a first blank containing the inlet portion and a second blank containing the drain portion, as taught by Beck, so that the inlet and drain portions could be made from two different materials.

Kayat teaches of a paper cup **25** with a handle (**5 and 10**), in which the handle is made from a separate blank than the cup (**See Figs. 1-3, and col. 1 lines 60-63**).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device taught by Fluckiger in view of Bartlett so that it was formed from a first blank containing the inlet portion and a third blank containing the gripping portion, as taught by Kayat, so that the inlet and gripping portions could be made from two different materials.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Pani whose telephone number is 571-270-1996. The examiner can normally be reached on Monday-Friday 7:30 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Bomberg can be reached on 571-272-4922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a


Application/Control Number: 10/524,342

Page 13

Art Unit: 3709

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JP 5/03/2007



THAO X. LE
PRIMARY PATENT EXAMINER